

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GARY DIAZ,

Plaintiff,

vs.

DEBT RECOVERY SOLUTIONS, LLC,

Defendant.

Case No. 2:11-cv-01681-LRH-GWF

**REPORT AND
RECOMMENDATION**

Application to Proceed in Forma
Pauperis (#1)

This matter comes before the Court on Plaintiff's Application to Proceed in Forma Pauperis (#1), filed on October 18, 2011. Pursuant to 28 U.S.C. § 1914(a), a filing fee of \$350.00 is required to commence a civil action in federal district court. The court may authorize the commencement of an action without prepayment of fees and costs or security therefor, by a person who submits an affidavit that includes a statement showing the person is unable to pay such costs. 28 U.S.C. § 1915(a)(1). The standard in 28 U.S.C. § 1915(a)(1) for in forma pauperis eligibility is "unable to pay such fees or give security therefor." Determination of what constitutes "unable to pay" or unable to "give security therefor" and, therefore whether to allow a plaintiff to proceed in forma pauperis, is left to the discretion of the presiding judge, based on the information submitted by the plaintiff or plaintiffs. *See, e.g., Fridman v. City of New York*, 195 F.Supp.2d 534, 536 (S.D.N.Y.), *aff'd*, 52 Fed.Appx. 157 (2nd Cir. 2002).

In Plaintiff's application to proceed in forma pauperis, Plaintiff indicates that he is employed and earns approximately \$4700 per month. Plaintiff also indicates that he has \$2700 in cash, checking or savings accounts. Further, Plaintiff lists out several household expenses totaling just over \$3000 per month. Considering Plaintiff's monthly expenses in combination with his

1 monthly income, Plaintiff has approximately \$1700 a month in discretionary income. Based on the
2 financial information provided, the Court finds that Plaintiff has the ability to pay the fees
3 associated with bringing this case. Accordingly, upon consideration of the financial information
4 provided, and to maintain the integrity of the indigent request process, the Court recommends that
5 plaintiff's application to proceed in forma pauperis be denied. Accordingly,

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7 **RECOMMENDATION**

8 **IT IS HEREBY RECOMMENDED** that Plaintiff's Application to Proceed in Forma
9 Pauperis (#1) be **denied**. Plaintiff therefore shall submit to the clerk's office the \$350.00 fee for
10 filing a civil action on or before **Wednesday, November 30, 2011**, or the above-captioned case
11 shall be dismissed.

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13 **NOTICE**

14 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be
15 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has
16 held that the courts of appeal may determine that an appeal has been waived due to the failure to
17 file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit
18 has also held that (1) failure to file objections within the specified time and (2) failure to properly
19 address and brief the objectionable issues waives the right to appeal the District Court's order
20 and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153,
21 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

22 DATED this 27th day of October, 2011.

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25 GEORGE FOLEY, JR.
26 United States Magistrate Judge
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